

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

KATHRYN BAUMAN RUBENSTEIN,)
)
PLAINTIFF,)
)
VS.) CIVIL CASE NO.: 1:07cv798-MHT
)
BETTY JO BAUMAN, et al.,)
)
DEFENDANTS.)

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

COME NOW the Defendants, Marilyn Bauman Granger, Bennie Wayne Granger, Granger Limited, Inc., Barbara Bauman Kamensky and Allen E. Kamensky and respectfully object to the imposition of any injunction against these Defendants on the following grounds:

1. Plaintiff moved from a preliminary injunction to prevent each and every Defendant, their businesses, corporations, heirs, spouses, agents, servants, employees and attorneys from transferring or selling any assets of these Defendants or filing bankruptcy before Plaintiff could recover damages in this case.

2. A preliminary injunction is an extraordinary remedy which should only be granted if the moving party clearly establishes: (1) a substantial likelihood that she will ultimately prevail on the merits; (2) a showing that she will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to her outweighs whatever damage the proposed injunction may cause the moving party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest. *Cunningham v.*

Adams, 808 F.2d 815, 818-819 (11th Cir. 1987) The moving party must prevail on all four prerequisites before a preliminary injunction may issue. *Adams*, 808 F.2d at 819.

3. Because the Plaintiff can not establish that the Defendants violated any Constitutional rights under the color of state law, the Plaintiff has no likelihood of prevailing on the merits. Moreover, Rule 65 of the *Federal Rules of Civil Procedure* requires that Plaintiff give security for the payment of costs and damages suffered by a party wrongfully enjoined before the Court can issue a preliminary injunction. Plaintiff has provided no such security. *Fed.R.Civ.P.* 65(c).

4. Plaintiff's attempt to preclude these Defendants from transferring assets in order to secure satisfaction of a judgment that has not yet been entered is, in substance, an attempt to seize property pursuant to Rule 64 of the *Federal Rules of Civil Procedure*. Rule 64 allows prejudgment seizure only under the circumstances and in the manner provided by the law of the State in which the District Court is held.

Alabama allows prejudgment seizure only after the Plaintiff files an affidavit containing a description of the property, a statement that the Plaintiff is the owner of such property or is entitled to possession of it, a statement of specific facts which show that the property is wrongfully detained and a statement of specific facts in support of the contention that there is a risk of concealment, transfer or other disposition of or danger to the property. *Ala.R.Civ.P.* 64(b)(1)(A-D). Plaintiff has not and can not file any such affidavit with the Court.

WHEREFORE, based upon the foregoing, the Defendants submit that Plaintiff is not entitled to a preliminary injunction and her motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: **Mr. James Davis Farmer, Esq., jdf@ffmlaw.com, Attorney for Defendant MidSouth Bank, N.A. and Defendant PeoplesSouth Bank, Mrs. Virginia Lynn McInnes, Esq., vlm@ffmlaw.com, Attorney for Defendant MidSouth Bank, N.A. and Defendant PeoplesSouth Bank**, I further certify that I have served the following by placing a copy thereof in the United States Mail, postage prepaid and properly addressed to the following non-CM/ECF participants:

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